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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

20 Plaintiff alleges as follows:

I. Preliminary Statement

22 1. Plaintiff brings this action for damages based upon Defendants' violations
23 of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.*
24 (hereinafter "FDCPA"). In the course of attempting to collect a debt
25 allegedly owed by Plaintiff, Defendants engaged in deceptive, unfair and

1 abusive debt collection practices in violation of the FDCPA. Plaintiff
2 seeks to recover actual damages, and statutory damages, as well as
3 reasonable attorney's fees and costs.

4 **II. Statutory Structure of FDCPA**

5 2. Congress passed the FDCPA to eliminate abusive debt collection practices
6 by debt collectors, to insure that those debt collectors who refrain from
7 using abusive debt collection practices are not competitively
8 disadvantaged, and to promote consistent state action to protect consumers
9 against debt collection abuses. FDCPA § 1692.

10 3. The FDCPA is designed to protect consumers who have been victimized by
11 unscrupulous debt collectors regardless of whether a valid debt exists.
12 Baker v. G.C. Services Corp., 677 F.2d 775, 777 (9th Cir. 1982).

13 4. The FDCPA defines a "consumer" as any natural person obligated or
14 allegedly obligated to pay any debt. FDCPA § 1692a(3).

15 5. The FDCPA defines "debt" as any obligation or alleged obligation of a
16 consumer to pay money arising out of a transaction in which the money,
17 property, insurance, or services which are the subject or the transaction are
18 primarily for personal, family, or household purposes. FDCPA § 1692a(5).

19 6. The FDCPA defines "debt collector" as any person who uses any
20 instrumentality of interstate commerce or the mails in any business the
21 principal purpose of which is the collection of any debts, or who regularly
22 collects or attempts to collect, directly or indirectly, debts owed or due or
23 asserted to be owed or due to another. FDCPA § 1692a(6).

24 7. Any debt collector who fails to comply with the provisions of the FDCPA
25 is liable for any actual damage sustained; statutory damages up to \$1,000;

1 attorney's fees as determined by the Court and costs of the action. FDCPA
2 § 1692k.

3 **III. Jurisdiction**

4 8. Jurisdiction of the Court over this action and the parties herein, arises
5 under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. §1337. Venue lies in
6 the Phoenix Division of the District of Arizona as Plaintiff's claims arose
7 from acts of the Defendants perpetrated therein.

8 **IV. Parties**

9 9. Plaintiff is an individual residing in Maricopa County, Arizona.
10 10. Plaintiff is allegedly obligated to pay a consumer debt.
11 11. Plaintiff is a "consumer" as that term is defined by FDCPA § 1692a(3).
12 12. Defendant Weinstein & Riley, P.S. (hereinafter "W&R") is a Washington
13 corporation, and a law firm with its primary offices located at 2001
14 Western Avenue, Suite 400, Seattle, Washington.
15 13. W&R employs one or more attorney's licensed to practice law in the state
16 of Arizona and in the Arizona courts.
17 14. W&R is engaged in the business of collecting debts alleged to be due
18 another.
19 15. W&R is a "debt collector" as defined by FDCPA § 1692a(6).
20 16. Defendant Richard S. Ralston is an Arizona licensed attorney employed by
21 W&R.
22 17. Ralston also hold the position of an officer (Treasurer) of W&R.
23 18. Ralston engages in the business of collecting debts alleged to be due
24 another.
25 19. Ralston is a "debt collector" as defined by FDCPA § 1692a(6).

- 1 20. W&R also employs non-attorneys to assist the firm in the collection of
- 2 debts alleged to be due another.
- 3 21. W&R is liable for the acts of it's employees and agents within the scope of
- 4 their authority under the doctrine of respondent superior.
- 5 22. Defendant Faslo Solutions, LLC is a Delaware limited liability company
- 6 authorized to conduct business in Arizona.
- 7 23. Faslo is engaged in the business of collecting debts alleged to be due
- 8 another.
- 9 24. Faslo is licensed by the Arizona Department of Financial Institutions as a
- 10 collection agency, with license number 0910492.
- 11 25. Faslo is a "debt collector" as defined by FDCPA § 1692a(6).
- 12 26. At all times relevant herein, W&R and Ralston acted as agents of EMC
- 13 Mortgage Corporation and / or Faslo Solutions, LLC in the collection or
- 14 attempted collection of an alleged debt from Plaintiff.

15 **V. Factual Allegations**

- 16 27. In February 2006, Plaintiff financed the purchase of her family's home in
- 17 Phoenix, Arizona using two loans secured by deeds of trust in what is
- 18 commonly known as a 80/20 loan, the first loan being 80% of the home's
- 19 value, and the second 20%.
- 20 28. EMC Mortgage purchased both promissory notes from Pulte Mortgage
- 21 shortly after Plaintiff closed on her home.
- 22 29. Both EMC promissory notes were purchase money loans subject to A.R.S.
- 23 §§ 33-729 and 33-814.
- 24 30. Because of a divorce, and as a single mother of two children, Plaintiff was
- 25 unable to maintain the payments on the home and ultimately gave

1 possession of the home back to EMC Mortgage.

2 31. On or about August 20, 2008, Defendants Ralston and his firm W&R filed
3 suit on behalf of EMC Mortgage in Maricopa County Superior Court
4 against Plaintiff claiming a deficiency balance of \$56,078.17 on the second
5 position promissory note.

6 32. Attached to the complaint in support of the allegations therein was an
7 Affidavit of Indebtedness and Assignment signed by Micheaux Briley, a
8 Recovery and Records Manager of Faslo Solutions, LLC.

9 33. In the Faslo affidavit, Briley states that “[t]he account was originated with
10 Pulte Mortgage LLC on 02/08/2006” and that “EMC Mortgage
11 Corporation purchased this account from Pulte Mortgage LLC,” and that
12 EMC Mortgage Corporation engaged Faslo Solutions, LLC to service the
13 account and has provided full authorization to Faslo Solutions, LLC to sue
14 on the account. . . .”

15 34. Briley also states in the Faslo affidavit, that she has “personally reviewed
16 the complaint to be filed against the above- listed debtor and affirm that its
17 contents are true and correct. . . .”

18 35. Defendants served or caused Plaintiff to be served at her parents’ home on
19 or about September 13, 2008.

20 36. Her nine-year-old daughter, who was at her grandparent’s home when the
21 papers were served, called Plaintiff on the phone and asked “Mom, some
22 guy just dropped off some papers on the old house, mom, are you okay?”

23 37. As Plaintiff drove to her parent’s home to pick up the papers, she became
24 very worried, and emotionally upset, concerned about her family’s welfare
25 and not knowing whether she would be able to continue to support her

1 family with the pending lawsuit.

2 38. Upon information and belief, Defendants have filed other similar suits

3 against Arizona consumers on defaulted purchase money home loans, and

4 that it is a regular practice of Defendants to do so.

5 39. The actions taken by Defendants as set forth above were illegal, and made

6 with intent to harass, embarrass and humiliate Plaintiff and coerce payment

7 out of her.

8 40. As a result and proximate cause of Defendants' actions, Plaintiff has

9 suffered actual damages. These damages include, but are not limited to,

10 legal fees and court costs, headaches, loss of sleep, inability to concentrate,

11 depression, humiliation, crying, embarrassment, and other extreme

12 emotional distress.

13 41. As a result of Defendants' actions as outlined above, Plaintiff has suffered

14 actual damages, including incurring legal fees and court expenses,

15 embarrassment, humiliation, and anger, and other emotional distress.

16 42. Defendants' actions as outlined above were intentional, willful, and in

17 gross or reckless disregard of Plaintiff's rights and part of its persistent and

18 routine practice of debt collection.

19 43. In the alternative, Defendants' actions were negligent.

20 **VI. Causes of Action**

21 **a. Fair Debt Collection Practices Act**

22 44. Plaintiff repeats, realleges, and incorporates by reference the foregoing

23 paragraphs.

24 45. Defendants' violations of the FDCPA include, but are not necessarily

25 limited to, 15 U.S.C. §§ 1692d, 1692e, 1692e(2)(A), 1692(5), 1692e(8),

1 1692e(10), 1692f, 1692f(1), and 1692g.

2 46. As a direct result and proximate cause of Defendants' actions in violation
3 of the FDCPA, Plaintiff has suffered actual damages.

4 **VII. Demand for Jury Trial**

5 Plaintiff hereby demands a jury trial on all issues so triable.

6 **VIII. Prayer for Relief**

7 WHEREFORE, Plaintiff requests that judgment be entered against
8 Defendants and each of them for:

9 a) Statutory damages of \$1,000.00 per defendant pursuant to §1692k;
10 b) Actual damages in an amount to be determined by trial;
11 c) Costs and reasonable attorney's fees pursuant to §1692k; and
12 d) Such other relief as may be just and proper.

13
14 DATED December 10, 2008.

15
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